

IMPLEMENTATION OF CONVENTION ON CULTURAL PROPERTY

SEPTEMBER 21, 1977.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means,
submitted the following

REPORT

[To accompany H.R. 5643]

[Including cost estimate and comparison of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 5643) to implement the United Nations Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment to the text of the bill is a complete substitute therefor and appears in italic type in the reported bill.

Amend the title so as to read:

An Act to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

SUMMARY

H.R. 5643, as amended by the Committee on Ways and Means, provides legislation necessary for United States implementation of certain articles of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, to which the United States Senate gave its advice and consent to ratification on August 11, 1972.

H.R. 5643, as amended contains 16 sections. Section 1 contains a short title for the bill. Sections 2-6 implement Article 9 of the Convention, granting the President authority, subject to certain conditions and limitations, enter into bilateral or multilateral agreements or to take emergency actions to restrict the importation of certain archaeo-

logical or ethnological materials at the request of any State party to the Convention whose cultural patrimony is in jeopardy from pillage. Section 5 establishes a Cultural Property Advisory Committee representing the interested segments of the art community to advise the President on the need for and elements of agreements and emergency actions. Section 7 implements Article 7(b) of the Convention, prohibiting importation of any article of cultural property stolen from the inventory of a museum or similar institution in any State Party. Sections 8-10 contain provisions for recovery and return of material or articles to the State Party, including seizure and judicial forfeiture provisions. Section 11 exempts certain archaeological or ethnological material from the coverage of the bill. Sections 12-16 contain administrative provisions and definitions of terms.

H.R. 5643 generally follows the pattern on a broader scale of the Pre-Columbian Art Act (Public Law 92-587) reported by the Committee on Ways and Means and enacted on October 27, 1972, which prohibits the importation of pre-Columbian sculptures and murals without export certification by the country of origin. The UNESCO Convention is not self-executing and the Convention and United States implementing legislation are prospective, not retroactive in their application and effect. The bill also takes into account other understandings basic to Senate advice and consent to ratification that the Convention does not modify property interests in cultural property under the laws of the State parties and does not preempt any other remedies, civil or penal, available under Federal or State laws for the recovery of stolen cultural property to the rightful owner without payment of compensation.

GENERAL STATEMENT

The United Nations Educational, Scientific, and Cultural Organization (UNESCO) became concerned as early as 1960 about the increasingly serious problem of illegal international trade in national art treasures. The expanding world-wide market for objects of archeological and ethnological interest has led to wholesale pillage in some countries. As stated in the Secretary of State's transmittal of the Convention to the Senate, "clandestine excavations frequently have destroyed the scientific value of the objects and of the sites themselves. Ceremonial centers and architectural complexes of ancient civilizations have been mutilated, stone sculptures and reliefs have been removed, and churches have been robbed to feed a flourishing international art market." The nations affected have become increasingly disturbed at the jeopardy to their cultural patrimony from pillage and at the outflow of their cultural heritage to foreign countries as a result of illegal operations.

UNESCO's work led ultimately to the drafting and adoption of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property at its Sixteenth General Conference on November 14, 1970, by a vote of 77 (including the United States) to 1 with 8 abstentions. The Convention entered into force on April 24, 1972. To date, 33 countries have ratified or accepted the Convention.

The principal purpose of the Convention is to combat the increasingly illegal international trade in national art treasures. The State

parties to the Convention undertake to protect their own cultural heritage. They are also required to prohibit importation of cultural property stolen from museums, public monuments, or similar institutions, and to take appropriate steps upon request to recover and return such cultural property. They also agree to take what measures they can, consistent with existing national legislation, to prevent museums and similar institutions within their territory from acquiring cultural property originating in another country which has been illegally exported after the Convention entered into force. Parties further undertake to participate in a concerted international effort to determine and carry out the necessary corrective measures in cases where a State's cultural patrimony is in jeopardy from pillage of archeological or ethnological materials.

The Convention was submitted to the United States Senate on February 2, 1972 with a view to receiving its advice and consent to ratification. The Senate Foreign Relations Committee held public hearings on August 3, 1972, reported the Convention favorably on August 8, and the Senate gave its advice and consent to ratification by a vote of 79 to 0 on August 11, 1972, subject to one reservation and six understandings.

COMMITTEE ACTION

Since Senate advice and consent to ratification the Department of State has sought enactment of legislation to implement the operative articles 7(b) and 9 of the Convention required prior to deposit of the United States instrument of ratification. The Department of State submitted a proposal for implementing legislation to the House on June 8, 1973, embodied in H.R. 11754 of the 93d Congress. The Committee on Ways and Means did not consider the bill, but did receive some comments on it from the art community.

On July 31, 1975 the State Department submitted a new legislative proposal to the House (Executive Communication 1529) taking into account views received from interested individuals, groups, and institutions on the previous proposal. This revised version was introduced as H.R. 14171 on June 3, 1976. The Subcommittee on Trade invited written comments from interested parties on the bill, which were released to the public in a subcommittee print on August 3, 1976.

The trade staff then met informally with State Department officials and with representatives from the art community who proposed changes in the bill. H.R. 5643 as introduced on March 28, 1977 changed the State Department proposal of H.R. 14171 in a number of important respects, reflecting trade staff consideration of the comments and suggestions received during the informal discussions.

The Subcommittee on Trade held public hearings on H.R. 5643 on April 26, 1977. The Subcommittee received considerable testimony, written statements and correspondence from the Administration, art museum associations, individual museums and similar institutions, archaeologists and archaeological associations, and certain academicians strongly in favor of the bill with certain amendments. The association representing dealers in ancient and primitive art, individual antiquities dealers and private collectors, and some academicians in ancient art strongly opposed the bill.

The subcommittee began markup on H.R. 5643 on May 12, with the participation of administration officials and representatives of interested museum, archaeological, and dealer interests, followed by lengthy informal meetings of the trade staff with these representatives to seek reconciliation of widely divergent views on various amendments to the bill proposed in the hearing testimony. On July 29, the subcommittee completed markup of H.R. 5643 and reported it favorably by a roll call vote of 12-0 to the Full Committee on Ways and Means with extensive amendments reflecting the informal staff discussions. The subcommittee reported the bill on the understanding that further amendments would be prepared by staff for full committee consideration to define with greater precision and specificity the scope of material to be subject to authorities granted in the bill.

On September 15, the Committee on Ways and Means ordered H.R. 5643 reported by voice vote with three additional amendments as anticipated by the subcommittee. Each section of the bill and its purpose is discussed below.

Certain dealer and private collector interests opposed the bill on the grounds that artifacts left by early societies are the legitimate cultural heritage and property of all mankind, not exclusively of the nations who currently occupy the physical sites of these early cultures, particularly when governments often destroy valuable sites and objects through neglect and industrial development; comprehensive foreign export prohibitions and difficulties in meeting Customs entry requirements and procedures would greatly inhibit, if not prevent legitimate importation of archaeological and ethnological objects, depriving American collectors and the viewing public; and the market for objects prohibited entry into the United States would merely shift to other art-importing nations not parties to the Convention, creating little positive effect on the pillage of archaeological sites or illicit traffic in antiquities.

Your committee was persuaded, however, by the views expressed by the other segments of the art community and the Administration that international cooperation to combat pillage and illegal trade in cultural property requires that the United States, as the major art-importing nation in the world, exercise moral leadership and create an example through implementation of the Convention. While United States action alone will not eliminate pillage or prevent illicit traffic in antiquities, closing the American art market to illegal trade should create a significant deterrent and meaningful step toward international cooperative efforts to meet an increasingly serious problem of preserving and protecting national cultural heritage. The committee believes that the amendments to H.R. 5643 since it was originally introduced should meet the legitimate concerns of the antiquities dealers and private collectors, and urges that the bill as amended be passed.

SECTION-BY-SECTION ANALYSIS AND JUSTIFICATION

Section 1 provides a short title whereby this act may be cited as the "Convention on Cultural Property Implementation Act."

Sections 2-6 of H.R. 5643 implement Article 9 of the UNESCO Convention on Cultural Property which states:

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

Section 2 contains authority for the President to enter into agreements with other countries under certain conditions and limitations. Subsection (a) authorizes the President to enter into a bilateral agreement with a State Party to the Convention or a multilateral agreement with a State Party and with one or more other nations, whether or not States Parties, under which the United States will apply import restrictions under section 6 to certain archaeological or ethnological material of the State Party if (1) the State Party has requested United States assistance as required under Article 9 of the Convention and (2) the President determines four statutory conditions exist:

The cultural patrimony of the State Party is in jeopardy from pillage of its archaeological or ethnological materials;

The State Party has taken measures consistent with the Convention to protect its cultural patrimony;

Application of import restrictions to archaeological or ethnological material of the State Party would be of substantial benefit in deterring a serious situation of pillage and less drastic remedies are not available; and

Application of import restrictions in the particular circumstance is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.

These four findings of a general nature are preconditions to any use of section 2(a) authority to ensure that the United States will not automatically enforce through import controls whatever export prohibitions are established by other States Parties to protect their cultural patrimony, and to provide countries requesting assistance a clear indication of the circumstances required for a favorable United States response. The findings provide a flexibility and choice in extending cooperation, limiting use of the authority only to circumstances that clearly warrant import restrictions in conformity with the purposes of the Convention given the overall interest of encouraging international art movement. The first two findings require demonstrations of need by the State Party in connection with its request for assistance; the third and fourth findings involve an evaluation of whether application of import restrictions as the response is in the United States' national interest and conforms to the purposes underlying the Convention.

The first finding conforms to language in article 9 of the Convention itself, namely that there must be a factual situation existing of

pillage of archaeological or ethnological material in the State Party of sufficient proportion or serious nature that the cultural patrimony of that State Party is in jeopardy. An article-by-article analysis of the Convention prepared by the Department of State in connection with Senate ratification cited two examples of such situations as "(1) the case in which the remains of a particular civilization are threatened with destruction or wholesale removal as may be true of certain pre-Columbian monuments, and (2) the case in which the international market for certain items has stimulated widespread illegal excavations destructive of important archaeological resources."

Your committee did not accept the view advanced by the dealers in ancient art that exercise of the section 2 agreement authority should be limited only to exceptional cases of an extraordinary and critical nature or of crisis proportions. The findings require a "serious situation of pillage" and the authority is not intended as a means to deal with the general problem of illegal exportation of large amounts of cultural objects from many countries. However, the restrictive interpretation proposed by the dealers is not supported by the language of and obligations accepted by the United States under the Convention and would, in effect, condone pillage unless of such widespread and critical scale as to be nearly at the point of irremediable damage.

The second requirement of a finding that the State Party has taken measures of its own consistent with the Convention to protect its own cultural patrimony also conforms to provisions of the Convention. Article 6 specifically requires that States Parties undertake to introduce export certificates to specify and accompany all items of cultural property for which exportation is authorized in accordance with regulations and to prohibit exportation of cultural property not accompanied by a certificate. Article 5 calls upon States Parties to establish, as appropriate, national services with specific functions to ensure the protection of their cultural property against illicit import, export, and transfer of ownership. The committee regards the establishment of export controls as a minimum step and expects the President will determine before making a positive finding that the State Party's efforts to protect its cultural patrimony include not only the passage of laws but also good faith efforts of enforcement. The State Party should be making a serious effort to solve its problem of pillage and illicit art trade on its own, not merely rely upon the United States and other countries to enforce its export controls.

The third finding involves a determination of whether the application of import restrictions would be of substantial benefit in deterring a serious situation of pillage and whether less drastic remedies are available as a response. The committee does not view the grant of authority to the President to enter into agreements to impose import restrictions as a matter to be taken lightly or to be used as the answer to every State Party request. Rather, the authority is regarded as an extraordinary measure to be resorted to only if other, less drastic alternatives are not available to the United States to remedy the situation and the President judges after receiving the advice of the Advisory Committee established under section 5 that the potential deterrent effect on a serious situation of pillage makes import restrictions warranted. The requirement that United States import controls be of substantial benefit in deterring the pillage could involve

a showing, for example, that a significant part of the flow of materials is coming to the United States and the country of origin intends to encourage similar cooperation from other importing nations to debar the flow to their countries.

The fourth finding requires a determination that the benefit from imposing import restrictions to help a State Party preserve and protect its cultural patrimony from pillage is also consistent with the interest underlying the Convention in promoting the international movement of art for its significant cultural scientific, and educational values. This finding should be viewed in conjunction with the intent expressed in the bill that the President should seek a commitment from the State Party to an agreement under section 2(a) to permit the exchange of its archaeological and ethnological material under circumstances in which exchange does not jeopardize its cultural patrimony. Many of the countries which may seek United States assistance do not permit exportation of any archaeological objects for sale. Some of these countries permit cultural exchange, others do not. The United States should actively encourage and seek the commitment of countries with whom it enters agreements to liberalize their export controls to permit exchange of their cultural property through legitimate channels for purposes of exhibition or in support of scientific cooperation.

The President may enter into a multilateral agreement with other countries, whether or not States Parties, that undertake to apply import restrictions comparable or equivalent in effect to the import restrictions the United States would impose under section 6. Alternatively, the United States may enter into a bilateral agreement with only the requesting State Party to impose import restrictions under section 6 to that archaeological or ethnological material of the State Party the pillage of which is creating the jeopardy to the cultural patrimony of the State Party found under section 2(a) (1). The negotiating process would determine the specific materials to be covered by agreements, within the parameters of the definition of "archaeological or ethnological material" under paragraph (2) of section 15. In addition, the President should seek in any agreement the commitment of the State Party to permit the exchange of the archaeological or ethnological material under circumstances in which such exchange would not jeopardize its cultural patrimony.

Section 2(b) limits any bilateral or multilateral agreement to an initial effective period of not more than 5 years. The President may extend an agreement for additional periods he deems reasonable.

Article 9 of the Convention envisages participation by States Parties to the Convention in a "concerted international effort" upon the call of another State Party to help control the pillage of its archaeological or ethnological material. Considerable concern was expressed to the subcommittee by antiquities dealers and private collectors that restrictions imposed solely by the United States on archaeological or ethnological material as the first major art-importing nation to implement the UNESCO Convention would merely divert the illicit flow of such objects to Europe, Japan, or other markets not parties to the Convention and, in effect, penalize United States citizens by denying them the right to purchase or view such objects on exhibition.

Administration spokesmen and representatives of the art museums and antiquities dealers unanimously supported the inclusion of authority for the President to enter into a multilateral agreement with the requesting State Party and with other importing nations, whether or not States Parties, to bring about an international coordinated effort to help protect the cultural patrimony of the State Party by closing off as many markets as possible for illicit importations. The problem of illicit traffic in archaeological and ethnological material is extensive in nature and requires an international response of as many governments as are willing to cooperate.

Multilateral agreements could result from efforts by the State Party itself in an international forum or on a bilateral basis to seek the cooperation of other countries in addition to that of the United States, or the United States could also seek the cooperation of other importing countries on its own initiative. Non-States Parties may be willing to join in a mutual effort to remove incentives to pillage by imposing import restrictions in particular situations, even though they are not willing to undertake the obligations of the Convention. The committee expects United States negotiators to strongly urge States Parties that request United States assistance under the Convention to seek meaningful participation by other art-importing nations in a multilateral effort. It should also be made clear to requesting States Parties that the United States response will be determined on the basis of the findings set forth in this Act and that the amount of material covered in a United States response will be influenced by the extent other nations join in a mutual effort.

The committee did not accept the view presented by the antiquities dealers that the basic authority and individual agreements should terminate automatically within a specific period unless there is evidence of an international concerted effort demonstrated by the willingness of third countries to enter into a multilateral agreement with the United States or to apply restrictions on a bilateral basis with the State Party.

The concern that United States action alone will be ineffective in meeting the objectives of the Convention and only continue the flow of objects to non-participants is a legitimate one. However, the committee believes the United States should take a moral stand and exercise its leadership as the major art-importing country by implementing the Convention, thereby helping to remove an incentive to serious pillage by prohibiting entry into the United States art market of objects illegally exported of importance to the cultural patrimony of States Parties irrespective of whether other countries continue to tolerate such illicit trade.

The bill, however, does address this problem in four ways: (1) The third finding under section 2(a) requires a determination that United States unilateral action would have a substantial effect in deterring a serious situation of pillage, that is, a moral stand by the United States must have a meaningful impact which, in turn, presupposes a significant involvement by the United States art market; (2) United States leadership in implementing the Convention and the authority to enter into multilateral agreements should create pressure on other importing countries to sign the Convention or at least to join in coop-

erative efforts to meet particular situations even if they are not parties to the Convention; (3) section 6 of the act permits the United States art community to purchase and import objects otherwise subject to restriction which have been removed from their country of origin for at least 10 years, subject to certain conditions; and (4) there would be a review of the situation at the end of the 5-year maximum initial period for any agreement under section 2(b), including views of the Cultural Property Advisory Committee on whether the four basic findings are still valid, with respect to any State Party with whom the President proposes to extend an agreement. While extension of an agreement is not conditional upon a meaningful international response to the situation in a particular State Party, your committee expects that an assessment of the effectiveness of the United States action in deterring pillage and the extent to which other nations have undertaken meaningful measures in support of the United States effort will be a major consideration, along with the presence of the four findings under section 2(a), in any recommendations by the Advisory Committee and decision by the President to renew an agreement.

Section 2(c) requires the President to publish notice in the *Federal Register* of a request from a State Party or of his proposal to extend an agreement beyond the initial period. The President must also submit information to the Advisory Committee appropriate for the Committee to carry out its advisory function on the request including any information pertaining to possible emergency action under section 3) or on his proposed extension of an agreement. Before entering into or extending an agreement, the President must consider the views and recommendations in a Committee report on the State Party request or on the proposed extension of an agreement if that report is submitted within 120 days after the President provided the Committee the appropriate information. Section 3(c) provides for Presidential consideration of Advisory Committee views on emergency actions.

Subsection (d) requires the President to submit a document to the Congress promptly after entering into or extending an agreement or taking emergency action. The document must include a description of the action taken (including the text of any agreement), the differences, if any, between the action taken and Committee views and recommendations if submitted within the time period requiring Presidential consideration, and the reasons for such differences. If no agreement is entered into but the Committee submitted a report within the time limit recommending such an agreement, the President must submit to Congress a document stating the reasons why an agreement was not entered into.

Section 3 authorizes the President to impose the import restrictions under section 6 on archaeological or ethnological material of any State Party for a temporary period if he determines an emergency condition exists with respect to such material. Subsection (a) defines "emergency condition" as a situation in which the archaeological or ethnological material of a State Party is one of the following:

Newly discovered material important for understanding the history of mankind and in jeopardy from pillage, dismantling, or fragmentation;

Identifiable as coming from a site of high cultural significance in jeopardy from pillage, dismantling, or fragmentation of actual or threatened crisis proportions;

Part of the remains of a particular civilization, the record of which is in jeopardy from pillage, dismantling, or fragmentation of actual or threatened crisis proportions.

In addition, the President must determine that application of temporary import restrictions would reduce the incentive for such pillage, dismantling, or fragmentation, in whole or in part.

Subsection (b) authorizes the President to apply the import restrictions under section 6 to archaeological or ethnological material of a State Party for which he determines an emergency condition exists, subject to the limitations under subsection (c).

Subsection (c) sets three limitations on the emergency authority. First, it prohibits the President from implementing section 3 unless the State Party made a request to the United States under section 2(a) for assistance under Article 9 of the Convention. However, indication by the State Party in its request that an emergency condition exists is not a necessary precondition to the use of the emergency authority.

Second, before making his decision on emergency action, the President must consider the views and recommendations of the Advisory Committee on the use of the emergency authority if the Committee has submitted its report to him within 60 days after the President provides it information under section 2(c) (2) on the request of the State Party. The information provided by the President should include any indication by the State Party of an emergency situation.

The third limitation requires termination of any emergency import restrictions no later than two years from the date of the State Party's request or on the date an agreement is entered into under section 2(a) with the State Party, whichever is earlier.

Section 4 authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to issue regulations listing the archaeological or ethnological material of the State Party covered by an agreement or emergency action. The proposed regulations would be published in the Federal Register with a request for comments prior to their effective date in accordance with the provisions of the Administrative Procedure Act. The final regulations would be issued prior to the effective date of the import restrictions.

The Secretary may list such material by type or other classification but each such listing must be sufficiently specific and precise to serve the two purposes of ensuring that (1) the import restrictions are applied only to material covered by the agreement or emergency action (that is, whole pillage is creating the jeopardy to the cultural patrimony of the State Party found to exist under section 2(a) or section (3)); and (2) importers and other interested persons are provided fair notice of what archaeological or ethnological material is subject to import restrictions.

Section 5 provides a permanent statutory mechanism whereby representatives of the art community will advise the President on the exercise of his authorities under the Act affecting their interests.

Subsection (b) sets forth the membership and terms of office of the nine-member Committee. The President will appoint seven members

from nominees selected by the seven organizations listed in the statute. The President will appoint one person from two nominees selected by one academic art association, and two persons from among each group of four nominees selected by two associations representing museum, archaeological, and dealer interests. The President will also appoint two members to represent the public interest, neither of whom can be an officer or employee of any of the organizations nominating the other seven members. Members must be specifically qualified to serve on the basis of their education, training, or experience. Nominees and appointments must ensure fair representation of the public and private sector interests in the international exchange of archaeological or ethnological materials, and each sector must also be fairly representative and balanced in terms of geographic regions of the United States and institutional size.

Members will be appointed for 3-year rotating terms and are eligible for reappointment to one additional term, which may or may not be consecutive. Of the first group of members appointed, three will serve 1, three will serve 2, and three will serve a 3-year term. Any member initially appointed for less than a full term is eligible for reappointment to two full additional terms. Any vacancies will be filled in the same manner as the original appointments.

Subsection (d) provides for seven of the nine members to constitute a quorum. All decisions will be made by a majority of those present and voting. The committee members will elect their own Chairman and Vice Chairman.

Subsection (e) requires the Secretary of State to provide the administrative and technical support services necessary for the Committee to function effectively. The Administrator of General Services will provide necessary offices, equipment, supplies, and maintenance services. If the committee so requests, the head of any Federal agency may detail its personnel on a reimbursable basis to the committee to assist it in carrying out its functions. Your committee expects the Advisory Committee to perform its own functions to the extent possible. The detail of Federal agency personnel should be strictly limited and restricted to circumstances which require it. The Advisory Committee may call upon experts outside the Federal Government with specialized knowledge of particular types of art or situations involving the State Party request to assist it from time to time on a voluntary basis.

Subsection (f) specifies the three advisory report functions of the committee. The committee is required with respect to each request by a State Party under section 2(a) to prepare an advisory report on the results of its investigation and review of the four conditions under section 2(a) (1) through (4) and its recommendation and reasons as to whether or not an agreement should be entered into. The Committee must also prepare a report on its recommendations and reasons as to whether or not an agreement should be extended beyond the initial period if the President proposes such an extension. As provided under section 2(c), the Committee has 120 days from the date the President provides it information on a request or extension to submit a report requiring his consideration.

A third type of report pertains to a possible emergency situation. If the committee finds on its own that an emergency condition exists

under section 3, whether or not the State Party indicates the presence of an emergency in its request under section 2(a), the committee must submit a report to the President of its recommendations and reasons as to whether or not emergency import restrictions should be imposed. The committee would also report any findings and their basis that no emergency condition exists in cases where the State Party claimed an emergency present in its request. Reports on emergency conditions must be submitted within 60 days to receive Presidential consideration, as provided in section 3(c) (2).

Any committee report recommending entry into an agreement, extension of an agreement, or implementation of emergency action will stipulate what archaeological or ethnological material should be covered, by type or other classification the committee deems appropriate, and the terms and conditions it deems necessary and appropriate to include in the agreement or emergency action to carry out the intent of the Convention. Any member may include dissenting views as part of a report. The committee will submit a copy of each report to the Congress as well as to the President.

Subsection (g) requires the committee to keep the effectiveness of agreements and emergency actions under continuing review. The committee may submit a report to both the President and the Congress with recommendations for improving the effectiveness of any agreement, emergency action, or of the act, if it finds that any agreement or emergency action is not achieving its purpose or that the act requires changes in order to implement fully United States obligations under the Convention.

Considerable concern was expressed by the antiquities dealers that a grant of broad discretionary power to the President as proposed in the original bill would lead to comprehensive import restrictions imposed primarily to promote foreign political relations with developing countries. Your committee believes the Advisory Committee structure provides a meaningful response to this concern as a compromise between positive legislative action on each State Party request or, at a minimum, congressional review of Presidential actions through a veto, treaty ratification, or layover procedure as proposed by the dealers, and guidance from panels of experts chosen by the President on an ad hoc basis to advise him on particular problems as proposed by the State Department. A permanent committee with statutory specification of balanced representation of museum, archaeological, dealer, and academic interests through a self-nomination process and advisory functions on all aspects of the program which must be considered by the President should provide the art community a substantial, continual input into the exercise of Presidential authority affecting their interests. While the views and recommendations of the Advisory Committee are not binding upon the President, your committee expects the advice from the art community to provide the primary basis for Presidential determinations under the act. The reporting requirements under section 2(d) make the President accountable to the Advisory Committee and to the Congress for any of his actions departing from committee advice.

Section 6 specifies the documentation requirements for lawful exportation from the State Party and importation into the United States of archaeological or ethnological material designated under section 4, and action by U.S. Customs in the absence of such documentation.

Subsection (a) prohibits the importation into the United States of any designated archaeological or ethnological material from a State Party with which the United States has entered into an agreement or taken emergency action, unless that State Party issues an export certificate or other document certifying that the exportation is not in violation of its laws.

Subsection (b) requires the consignee of designated material to present the customs officer at the time of entry either (1) the export certificate, or (2) satisfactory evidence that the material was exported from the State Party (i.e., country of origin) either at least 10 years prior to entry into the United States or on or before the effective date of the regulation under section 4 listing the material. To meet the 10-year abroad provision, satisfactory evidence must be presented to Customs that during the most recent 10-year period preceding entry no citizen or permanent resident of the United States contracted for or acquired a direct or indirect interest in the material and that the State Party received or should have received fair notice following exportation from the State Party of the material's location through exhibition, publication, or other circumstances.

If the consignee does not present export certification or satisfactory evidence, the customs officer will refuse to release the material from customs custody and will send it to a bonded warehouse or store to be held at the consignee's risk and expense until the necessary documentation or evidence is filed with the officer. The material is subject to seizure and judicial forfeiture if the documentation or evidence is not presented within 90 days after the date release was refused, unless a longer period is allowed by the Secretary of the Treasury for good cause shown.

Subsection (c) defines "satisfactory evidence" with respect to the 10-year abroad provision as requiring one or more declarations under oath by the consignor or shipper and by the importer or consignee which (1) state that the material was exported from the State Party at least 10 years prior to its date of entry into the United States, (2) names those having an interest in the material during the 10-year period preceding entry and declares they are not citizens or permanent residents of the United States, and (3) shows compliance with regulations issued by the Secretary of the Treasury on evidence of exhibition, publication, or other circumstances that constitute fair notice to the State Party of the location of the material after its exportation from the State Party, together with certified copies of export documentation.

"Satisfactory evidence" that the material was exported from the State Party on or before its designation under section 4 as subject to an agreement or emergency action consists of one or more declarations under oath by the consignor or shipper and the importer or consignee stating that the material was exported prior to such date, together with certified copies of export documentation. The subsection lists examples of types of documents which would constitute "satisfactory evidence."

The purpose of the 10-years abroad provision is to permit art dealers and collectors in the United States to import archaeological or ethnological material otherwise prohibited entry into the United States if such objects have left their State Party country of origin

for a sufficiently long period (i.e., at least 10 years) that restriction of their purchase and importation would no longer serve to deter pillage and would unnecessarily deny access to the American viewing public. To avoid creating a loophole and incentive for illicit exportation and circumvention of the import restrictions, satisfactory evidence must be presented to Customs upon entry that no United States citizen or permanent resident has contracted for or acquired a financial interest in the particular object during the most recent 10 years preceding entry and that the State Party received or should have received fair notice of the material's location during the period following its exportation. The purpose of these requirements is to "cleanse" the object by dampening the incentive for illegal exportation and American acquisition or investment and concealment of the object abroad for 10 years to avoid United States import restrictions, giving the State Party country of origin no real opportunity to seek recovery if it so desires.

Section 7 implements article 7(b)(i) of the Convention which requires that State Parties undertake

to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.

Section 7 prohibits the importation of any article of cultural property stolen from the inventory of a museum or religious or secular monument or similar institution. "Cultural property" is defined under paragraph (6) of section 15 as including the categories listed in article 1 of the Convention, whether or not the article is specifically designated by the State Party for this purpose, and is broader than but inclusive of archaeological or ethnological material.

Arts thefts are an increasingly serious problem around the world, and this provision shall apply to items of cultural property stolen from a broad range of institutions and public monuments in State Parties. In addition to museums proper open to the public, the language is intended to cover cathedrals, temples, shrines, and other religious edifices or sites open to the public for sightseeing purposes (St. Peter's, Rome; Cologne Cathedral; Church of the Holy Sepulchre, Jerusalem; Wailing Wall, Jerusalem, etc.) and secular buildings, edifices, or sites open to the public for sightseeing purposes (Pompeii, Italy; Teotihuacan, Mexico; Angkor Wat, Cambodia; Colosseum, Rome; Arc de Triomphe, Paris, etc.) There is also meant to be covered facades, murals, internal and external ornamentation, statuary, paintings, objects of artistic or religious significance, etc., affixed to, or located in or on such edifices or sites. An article of cultural property would be covered by section 7 if it were listed in the inventory of a particular institution or if it were affixed to or located in or on an edifice or site which itself is included in an inventory.

Section 7 takes effect with respect to any article stolen after the effective date of this act or after the date the Convention enters into force for the State Party, whichever is later, whether or not the United States has an agreement under section 2 or has taken emer-

gency action under section 3 to restrict importation of archaeological or ethnological material from that State Party.

Section 8 provides for temporary retention of any archaeological or ethnological material or article of cultural property in a public museum or other cultural or scientific institution in the United States pending a final determination of whether the material or article was imported in violation of sections 6 or 7. The Secretary of the Treasury will permit retention upon application by an institution if he finds that the institution will take sufficient safeguards to protect the material or article and will post sufficient bond to insure its return to the Secretary.

Sections 9-10 of H.R. 5643 contain the provisions for seizure, judicial forfeiture, and disposition of archaeological or ethnological material or of stolen articles of cultural property imported in violation of sections 6 or 7.

Section 9 contains the seizure and judicial forfeiture provisions and the conditions for return to the State Party of protected material or articles which are judicially forfeited to the United States. Subsection (a) provides that any designated archaeological or ethnological material or article of cultural property imported in violation of sections 6 or 7 will be subject to seizure and judicial forfeiture. All provisions of law relating to seizure, judicial forfeiture, and condemnation for violation of the customs law apply insofar as they are applicable to and not inconsistent with provisions of this Act.

Section 9 specifically provides for judicial forfeiture. No summary forfeitures would be permitted under this Act. The contending parties have the right to full court review to decide all questions of law and fact involved and the material or articles in question cannot be returned to the State Party, disposed of, or otherwise removed from the jurisdiction of the court during the course of judicial review proceedings. The reference to the customs laws includes section 604 of the Tariff Act of 1930, which specifically provides that forfeiture proceedings will take place in the United States district court; there is no discretion on court jurisdiction in these cases.

Subsection (b) specifies that any archaeological or ethnological material imported in violation of section 6 and judicially forfeited to the United States must first be offered for return to the State Party. The object will be returned if the State Party bears the expenses of return and delivery and complies with any other requirements related to the return prescribed by the Secretary of the Treasury. Otherwise, the object will be disposed of as prescribed for articles forfeited for violation of the customs laws.

Subsection (c) specifies that any action for forfeiture of an article of cultural property imported in violation of section 7 is subject to the following alternatives:

1. If the claimant establishes valid title as against the institution from which the article was stolen, forfeiture will not be decreed unless the State Party requesting its return pays the claimants holding valid title just compensation.

2. If the claimant does not establish valid title but establishes purchase for value without knowledge or reason to believe the article was stolen, then forfeiture will not be decreed unless (a) the State Party to which the article is to be returned pays that innocent purchaser an

amount equal to what he paid for the article, or (b) the United States establishes that the State Party, as a matter of law or reciprocity, would in similar circumstances recover and return an article stolen from a United States institution without requiring payment of compensation.

Implementation of article 7(b) does not affect existing remedies available in State or Federal courts or laws prohibiting theft and the knowing receipt and transportation of stolen property in interstate and foreign commerce (e.g., National Stolen Property Act, Title 18, U.S.C. Sections 2314-15), including the possible recovery of stolen property to the rightful owner in the courts without payment of compensation. Article 7(b) (ii) of the Convention specifically requires that an offer of just compensation be made to a person holding valid title to or to an innocent purchaser of an article of cultural property by the State Party requesting its return. However, innocent purchasers who do not acquire valid title as against the true owner may not be entitled to compensation under applicable municipal laws in the United States. Consequently, the fourth understanding adopted by the Senate in its advice and consent to ratification of the Convention, as reflected in section 9(c) of H.R. 5643, provides that the United States is prepared to return recovered stolen cultural property without payment of compensation if it establishes before the court as a matter of law or reciprocity that the claiming State Party would in similar circumstances recover and return an article stolen from an institution in the United States without requiring payment of compensation. It is considered that reciprocity would have to be shown by a Government decree, proclamation, written commitment, written opinion or other written document.

Any article which is forfeited to the United States must first be offered for return to the State Party where the institution is located from which it was stolen. The article will be returned if the State Party bears the expenses of return and delivery and complies with any other requirements related to return as prescribed by the Secretary of the Treasury. Otherwise, the property will be disposed of as prescribed for articles forfeited for violation of the customs laws.

Section 10 establishes the evidentiary requirements in any forfeiture proceeding under this Act in which archaeological or ethnological material or an article of cultural property is claimed by any person. Notwithstanding section 615 of the Tariff Act of 1930, the burden of proof will be on the United States in such proceedings to establish that material subject to section 6 has been designated by the Secretary of the Treasury under section 4 as covered by an agreement with a State Party or by an emergency action. In the case of an article of cultural property, the United States must establish that the article appertains to the inventory of a museum or similar institution in a State Party and was stolen from that institution after the effective date of this Act or after the date the Convention entered into force for the State Party concerned, whichever is later.

Section 11 exempts archaeological or ethnological material or an article of cultural property from the provisions of the Act under either of the following two circumstances:

1. Material or articles imported into the United States for temporary exhibition or display are exempt if they are immune from

seizure under judicial process pursuant to 22 U.S.C. 2459. To achieve such immunity, the President or his designee must have determined prior to importation of the object that it is of cultural significance and that its temporary exhibition or display within the United States is in the national interest, and he must have published notice to this effect in the Federal Register.

2. Material or articles are exempt from the Act if they have been in the United States for at least 10 consecutive years from the date of importation and either (a) have been exhibited for at least 5 years during that period in a recognized museum, religious or secular monument, or similar institution or (b), if (a) does not apply, the State Party received or should have received fair notice through publication or other means, to be prescribed by regulation, of its location within the United States during this period.

The 10-years in the United States exemption provides, in effect, a 10-year statute of limitations on seizure and judicial forfeiture of material or articles if the State Party country of origin has had the opportunity to seek recovery during that period through fair notice of their location. The statute of limitations applicable under the customs laws (section 621 of the Tariff Act of 1930) provides that all forfeiture actions must be instituted within 5 years after the alleged offense was discovered. In this case no further purpose would be served under the Convention by seizure and forfeiture proceedings after an object has been in the United States at least 10 years if adequate opportunities for discovery and recovery have been afforded during this period.

Section 12 authorizes the Secretary of the Treasury to prescribe rules and regulations as necessary and appropriate to carry out the act.

Section 13 provides for customs officers to enforce the Act in the United States customs territory and in the Virgin Islands. The President will designate persons to enforce the act in other United States territories or areas outside the customs territory or Virgin Islands.

Section 14 authorizes appropriations after September 30, 1978 (i.e., beginning in fiscal year 1979) of such sums as may be necessary to carry out the act.

Section 15 contains definitions of various terms used in the act.

That Convention itself does not include a definition of what constitutes "archaeological or ethnological material" for purposes of the Convention. The definition of these terms in H.R. 5643 as amended reflects the understanding of U.S. participants in the drafting of the Convention and the intent of your committee to limit the application of import restrictions under agreements entered into under section 2 or emergency actions taken under section 3 to a narrow scope of objects which meet certain characteristics. As defined under paragraph (2) of section 15, "archaeological material" would include any object which is at least 500 years old, is of cultural significance, and normally has been discovered through scientific excavation, clandestine or accidental digging, or exploration on land or under water. Archaeological objects would usually be found underground or under water, discovered through excavation, digging, or exploration. However, the definition would also include objects which are typically regarded as archaeological, for example frescoes from buildings, without regard

to whether the particular objects are discovered by excavation or exploration.

The scope of the term "ethnological material" is limited to any object which is the product of a tribal or similar society, is at least 50 years old, and is important to the cultural heritage of a people because of its distinctive characteristics, its comparative rarity, or its contribution to the knowledge of their origins, development, or history. Your Committee intends that this definition encompass only what is sometimes termed "primitive" or "tribal" art, such as masks, idols, or totem poles, produced by tribal societies in Africa or similar-type societies in the Aleutians or Oceania, for example. Such objects must also be old and be important to a cultural heritage by possessing characteristics which distinguish them from other objects in the same category or by having a particular value to the knowledge of the origins and history of a people. The committee does not intend that the definition of ethnological material under this act apply to trinkets or other objects which are common or repetitive, essentially alike in material, design, color, or other outstanding characteristics with other objects of the same type, or which have relatively little value for understanding the origins or history of a particular people or society. An agreement or emergency action would also not apply to ethnological material, whatever its age, produced by more technologically advanced societies, such as French Renaissance furniture or Solzhenitsyn novels.

Of course, the Act is not self-executing. Your committee recognizes that reliance must be placed on the judgment of the Executive in including particular items in the agreements concluded or the emergency actions taken under the legislation. It should be noted that an object which meets the above criteria will not be subject to import restrictions unless it also meets the following pre-conditions envisioned in the Convention and specified in the act:

1. The object must have been first discovered in a State Party to the Convention.

2. The State Party must have imposed an export control on the object or category of objects, i.e., made exportation a violation of the country's laws.

3. The State Party must have requested assistance from the United States under Article 9 of the Convention to help it enforce its laws and protect its cultural patrimony, and the United States must have entered into an agreement with that country or taken temporary emergency action, subject to the findings of sections 2 or 3 and advice from the Advisory Committee, including their recommendations on the types of objects to be covered.

4. Only objects which have been or are threatened to be pilaged (i.e., plundered or looted from their traditional setting), creating jeopardy to the cultural patrimony of the State Party, can be subject to import restrictions under an agreement or emergency action.

5. The Secretary of the Treasury must have issued regulations published in the Federal Register and provided U.S. Customs a listing with sufficient specificity and precision to provide fair notice to importers and other interested par-

ties that a particular type of object is subject to import restrictions.

Your committee believes that the combination of the definition of archaeological and ethnological materials, the preconditions to the inclusion of these materials in agreements or emergency actions, and the requirement for specific designation of the material subject to import restrictions result in an appropriate and satisfactory balance between implementation of the legitimate purpose of the Convention to assist countries in protecting their cultural patrimony on the one hand, and legitimate concern that restrictions might be so broad and comprehensive in scope as to prevent importation into the United States of all or most archaeological or ethnological material subject to export control by a State Party.

Section 16 provides for the act to take effect on the 90th day after enactment, or on a prior date after enactment as the President prescribes and publishes in the Federal Register if he has appointed the initial members of the Advisory Committee.

VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with clause 2(1) (2) (B) of rule XI of the Rules of the House of Representatives, the following statement is made relative to the vote of the committee in reporting the bill. The committee by voice vote ordered H.R. 5643 favorably reported with amendments.

EFFECT OF THE BILL ON THE REVENUES, INCLUDING ESTIMATES OF CONGRESSIONAL BUDGET OFFICE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, your committee states that enactment of H.R. 5643, as amended would result in no gain or loss in revenue.

In compliance with clause 2(1) (3) (C) of rule XI of the Rules of the House of Representatives, the committee provides below cost estimates furnished by the Congressional Budget Office and required to be included herein on the amounts authorized to be appropriated under the bill beginning in fiscal year 1979:

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE, SEPTEMBER 19, 1977

1. Bill number: H.R. 5643.
2. Bill title: A bill to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.
3. Bill status: As reported by the House Committee on Ways and Means on September 15, 1977.
4. Bill purpose: This legislation provides for the implementation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, ratified by the United States Senate on August 11, 1972, by: (1) Granting the President authority, subject to certain conditions and limitations, to enter into agreements or to take emergency actions to restrict the importation of archaeological or ethnological materials; (2) establishing a Cultural Property Advisory Committee; (3) pro-

hibiting the importation of cultural property stolen from a museum or similar institution; and, (4) providing for the recovery and return of stolen cultural property.

In addition, this bill authorizes to be appropriated such amounts as may be necessary to carry out the purpose of the bill.

5. Cost estimate:

[By fiscal years; in millions of dollars]

	1978	1979	1980	1981	1982
Department of State budget function 150 authorization amounts and estimated costs.....	(1)	0.1	0.1	0.1	0.1
Department of the Treasury, U.S. Customs Service budget function 750 authorization amounts and estimated costs.....	(1)	.2	.2	.2	.2

* Less than \$50 000.

6. Basis of estimate: This estimate assumes enactment of this legislation before December 31, 1977 and subsequent appropriation for fiscal years 1979 and beyond.

Budget Function 150 costs are estimates of expenses borne by the Department of State in negotiating agreements under the Convention and providing support to the Cultural Property Advisory Committee. The estimate assumes four agreements will be negotiated per year by the Department of State's Bureau of Education and Cultural Affairs. The Cultural Property Advisory Committee is assumed to meet six times a year with travel and per diem and staff support supplied by the Department of State.

Budget Function 750 costs are estimates of the increased work load borne by U.S. Customs Service, Department of Treasury. The estimate assumes an increase of 5 man-years in investigations and operations.

7. Estimate comparison: Estimate of H.R. 5643 costs were prepared by the Department of State and the U.S. Customs Service. This estimate is comparable with the Department of State's estimate. The U.S. Customs Service estimates a 50 percent increase in the investigations of smuggling of art and artifacts as a result of this bill. Given that Customs presently has some responsibility concerning stolen property and the small number of agreements anticipated by the Department of State, their estimate appears excessive. This estimate assumes half the man-years estimated by the Customs Service will be needed.

8. Previous CBO estimate: None.

9. Estimate prepared by: Joseph C. Whitehill.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

OTHER MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 2(1)(3) (A), (B), and (D) and with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A) of clause 3 relating to oversight findings, your committee advises that in its review of the circumstances with respect to the cultural property involved, it concluded it would

be desirable to enact legislation necessary for the United States to implement the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, by reason of the considerations outlined above in the general statement.

With regard to subdivision (B) of clause 3, your committee states that this bill involves no new budgetary authority or new or increased tax expenditures.

With regard to subdivision (D) of clause 3, no oversight findings or recommendations have been submitted to the committee by the Committee on Government Operations concerning the subject matter contained in this bill.

With regard to clause 2(1)(4) of rule XI, your committee states that this bill would not have an inflationary impact on prices and costs in the operation of the national economy.

